

declared the case was being dismissed for jurisdiction, not because of Plaintiff's failure to follow the Court's orders. While the Court discussed the procedural history, this was done only to establish Plaintiff had the opportunity to respond and had failed to do so.

Defendant also contends granting the motion will result in a hardship because he has severed his relationship with counsel and cannot afford to retain new counsel. However, Defendant's financial position is no different than if the Court had properly recognized the limited scope of Defendant's motion and dismissed Count I only, so Defendant will not be placed in a worse position by granting the motion than he would be in if the error had not occurred. On the other hand, the Court's error should not place Plaintiff in a worse position than he would have been if the error had not occurred. Justice requires the motion be granted.

Plaintiff's Motion for Reconsideration is granted. The case is reopened except with respect to Count I of the Amended Complaint.

IT IS SO ORDERED.

DATE: September 24, 2007

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT